

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF ARCHITECTURE, ENGINEERING, LAND SURVEYING,  
LANDSCAPE ARCHITECTURE, GEOSCIENCE AND INTERIOR DESIGN

In the Matter of the Architect License of  
Alvah Breitweiser, License No. 15118

**FINDINGS OF FACT,  
CONCLUSIONS  
AND RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Kathleen D. Sheehy for a prehearing conference on November 28, 2007, at 1:30 p.m., at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. The OAH record closed at the conclusion of the prehearing conference.

Michele M. Owen, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101-2134, appeared on behalf of the Complaint Committee of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design (Board).

Alvah Breitweiser, 892 Dean Way, Fort Myers, FL 33919-3206 (Respondent) did not appear in person or by counsel.

**STATEMENT OF ISSUES**

The issues presented in this case are whether the Board should take disciplinary action against the Respondent because;

1. The Respondent has violated statutes, rules, or orders that the Board is empowered to enforce, pursuant to Minn. Stat. § 326.111, subd. 4(a)(1) (2006):

2. Respondent has been convicted of a crime involving moral turpitude, or has engaged in conduct or acts that are fraudulent, deceptive or dishonest, and that adversely reflect on his ability or fitness to engage in the practice of architecture, pursuant to Minn. Stat. §§ 326.11 and 326.111, subd. 4(a)(2), and in violation of Minn. R. 1805.0200 (2005);

3. Respondent has engaged in conduct or acts that are negligent or otherwise in violation of the standards established by Minn. R. chapters 1800 and 1805, pursuant to Minn. Stat. § 326.111, subd. 4(a)(3) (2006);

4. Respondent has been convicted of or has pled guilty to a felony, an element of which is dishonesty or fraud, or has engaged in conduct reflecting adversely on his ability or fitness to engage in the practice of architecture, pursuant to Minn. Stat. § 326.111, subd. 4(a)(4), and in violation of Minn. R. 1805.0200 and 1805.0700;

5. Respondent employed fraud or deception in obtaining a certificate, license, renewal or reinstatement pursuant to Minn. Stat. §§ 326.11, subd. 1, and 326.111, subd. 4(a)(5), and in violation of Minn. R. 1805.0200;

6. Respondent has had his architecture license revoked, suspended, canceled, limited, or not renewed for cause in any state, commonwealth or territories in the United States, pursuant to Minn. Stat. § 326.111, subd. 4(a)(6) (2006), and in violation of Minn. R. 1805.0200 and 1805.0700 (2005);

7. Respondent failed to meet a requirement for the issuance or renewal of his architect license pursuant to Minn. Stat. § 326.111, subd. 4(a)(8) (2006), and in violation of Minn. R. 1805.0700 (2005); and

8. Respondent has attached his seal or signature to a plan, specification, report, plat, or other architectural document not prepared by him or under his direct supervision, pursuant to Minn. Stat. §§ 326.11, subd. 1, 326.111, subd. 4(a)(9), and 326.12 (2006), and in violation of Minn. R. 1800.4200, 1800.4300, and 1805.0200 (2005).

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On October 19, 2007, the Complaint Committee sent by certified and first-class mail a copy of the Notice and Order for Hearing and Prehearing Conference (Notice and Order for Hearing) to Alvah Breitweiser, 892 Dean Way, Fort Meyers, FL 33919-3206.<sup>1</sup> The Post Office returned the mailing sent by certified mail as being unclaimed; however, the mailing sent by first-class mail was not returned.

2. The Notice and Order for Hearing scheduled a prehearing conference in this matter at 1:30 p.m. on November 28, 2007, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101.

3. The Notice and Order for Hearing specifically notified the Respondent that failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Board's allegations

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<sup>1</sup> Affidavit of Service by Certified and U.S. Mail (October 19, 2007).

contained in the Notice and Order for Hearing may be accepted as true, and that its proposed action may be upheld.<sup>2</sup>

4. The Respondent did not appear for the prehearing conference, nor did Respondent contact the Administrative Law Judge prior to the prehearing conference to seek a continuance or request any other relief.

5. Because Respondent failed to appear for the prehearing conference, he is in default.

6. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Board are authorized to consider this matter under Minn. Stat. §§ 14.50, 326.11, and 326.111, subd. 4(d) (2006).

2. Respondent received due, proper and timely notice of the charges against him and of the time and place of the prehearing conference. This matter is, therefore, properly before the Board and the Administrative Law Judge.

3. The Board has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations set out in the Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

5. The Respondent is in default as a result of his failure to appear at the prehearing conference.

6. The Board has grounds to take disciplinary action against the Respondent pursuant to Minn. Stat. § 326.111, subd. 4(a)(1) (2006), because he violated several statutes and rules (identified below) that the Board is empowered to enforce.

7. In May 2001 the Respondent was convicted of bank fraud in U.S. District Court for the Middle District of Florida, a crime involving moral turpitude. Discipline of the Respondent's Minnesota license is appropriate pursuant to

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<sup>2</sup> Notice and Order for Hearing at 7.

Minn. Stat. §§ 326.11 and 326.111, subd. 4(a)(2) (2006), and Minn. R. 1805.0200 (2005).

8. In January 2004 the Respondent was disciplined by the Florida Board of Architecture and Interior Design for negligence in the practice of architecture. Discipline of the Respondent's Minnesota license is appropriate pursuant to Minn. Stat. § 326.111, subd. 4(a)(3) (2006).

9. The Respondent's 2001 conviction of bank fraud is a felony, an element of which is dishonesty or fraud. Discipline against his Minnesota license is appropriate pursuant to Minn. Stat. § 326.111, subd. 4(a)(4) (2006), and Minn. R. 1805.0200 and 1805.0700 (2005).

10. When the Respondent applied to renew his Minnesota license in December 2004 and June 2006, he answered "no" to the question asking whether his license had been disciplined since the last renewal, and he failed to disclose the disciplinary actions taken against him in other jurisdictions. The Respondent thereby employed fraud or deception in obtaining a renewal or reinstatement of his license, and the Board has grounds to take disciplinary action pursuant to Minn. Stat. §§ 326.11, subd. 1, and 326.111, subd. 4(a)(5) (2006), and Minn. R. 1805.0200 (2005).

11. The Respondent's architecture license has been revoked, suspended, canceled, limited, or not renewed for cause in numerous other states between 1999 and 2006 (Oklahoma, Colorado, Florida, New York, North Carolina, South Carolina, Pennsylvania, Tennessee, Texas, Ohio, Wisconsin, Virginia, Illinois, and Delaware) for reasons that would in the State of Minnesota constitute a violation of Minn. Stat. §§ 326.02 – 326.15 or Minn. R. ch. 1805. Disciplinary action against the Respondent's Minnesota license is appropriate pursuant to Minn. Stat. § 326.111, subd. 4(a)(6) (2006) and Minn. R. 1805.0200 and 1805.0700 (2005).

12. In January 2005 the National Council of Architectural Registration Boards revoked the Respondent's certification. Discipline against the Respondent's Minnesota license is appropriate pursuant to Minn. Stat. §§ 326.10, subd. 1(a)(2) and 326.111, subd. 4(a)(8) (2006) and Minn. R. 1805.0700 (2005) because he failed to meet a requirement for the issuance or renewal of his architect license.

13. In 2004 the Florida Board of Architecture and Interior Design disciplined the Respondent's license because he attached his seal or signature to a plan, specification, report, plat, or other architectural document not prepared by him or under his direct supervision. Discipline of the Respondent's Minnesota license is appropriate pursuant to Minn. Stat. §§ 326.11, subd. 1, 326.111, subd. 4(a)(9), and 326.12 (2006), and Minn. R. 1800.4200, 1800.4300, and 1805.0200 (2005).

14. Disciplinary action against the Respondent's license is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner take disciplinary action against the license of Alvah Breitweiser.

Dated: December 3, 2007.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY

Administrative Law Judge

Reported: Default

### **NOTICE**

This Report is a recommendation, not a final decision. The Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Board's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Doreen Johnson Frost, Executive Director of the Complaint Committee, 85 East Seventh Place, Suite 160, St. Paul, MN 55101, telephone (651) 296-2388, to learn about the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes. Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.